

(26) W. C. W.

Summary Notes for Wood Preservative Internal Team Meeting
1990 CAP Audit Review

Select members of the Wood Preservative Team met on Thursday, January 24, 1991 at 1:30 pm in conference room number 2, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting was to review the 1990 Consumer Awareness Program (CAP) audit and to make recommendations to AWPI/SAWP on ways of improving the effectiveness of the CAP. These recommendations will be made to AWPI/SAWP in a meeting tentatively scheduled for mid February, 1991.

The following persons attended the meeting:

Sidney Jackson, RD/FHB
Mary Dominiak, OTS
Patricia Roberts, OGC
Jack Housenger, SH/SRB

The team expressed its concerns regarding the lack of effectiveness of the CAP as shown by the results from the past four audits and the mediocre level of compliance for the 1990 audit. The team agreed that the results of the last five audits showed that the voluntary CAP as set forth in the Amendment to The Notice of Intent to Cancel (51 FR 1334, January 10, 1986) fell short of the Agency's expectations. Accordingly, the question was asked if additional audits were useful or needed. After considerable discussion, the team agreed to defer that question to a forthcoming briefing with the OD.

The team agreed to schedule a briefing with the OD as soon as possible at which it will present three options for addressing the low level of awareness and participation the CAP. The options agreed upon and the rationale for them are listed below:

(1) Negotiated Agreement With The Wood Preservative Industry

This option would involve a negotiated agreement between EPA and the Wood Preservative Industry which would require the registrants of wood preserving chemicals to voluntarily amend their labels to prohibit the use of their products on wood that would not be properly stamped or otherwise clearly marked advising consumers to obtain consumer information before handling, using or disposing of treated wood. The wood preserving industry would be given a specific period of time (six weeks) to develop and present a draft labeling change proposal to EPA for review. Following EPA's review and acceptance of this proposal, further negotiations may be necessary to reach an agreement on the entire package.

Rationale: This option would require the least time and resources and would represent a cooperative effort between the Agency and the Wood Preserving Industry. It is also the option the Wood Preserving Industry prefers and on which it is most likely to agree.

(2) Regulation Under FIFRA

Under this option, the Agency would issue a Notice of Intent to Cancel pursuant to FIFRA. This notice would require all registrants of wood preserving chemicals to amend their labels prohibiting the use of their products on wood that enters the channels of trade without accompanying consumer information attached to or referenced on each piece of treated wood.

Rationale: Under 40 CFR 152.25, treated wood may be considered a pesticide although at present, most treated wood is exempt from regulation under FIFRA. This option would require a risk/benefit assessment and would be time consuming and resource intensive. Also, additional data may be needed to define more clearly the risks associated with exposure to treated wood. In addition, a revised benefit assessment would be needed which would be likewise time consuming and resource intensive. Registrants who fail to comply with the Notice of Intent to Cancel would face cancellation. This option would carry statutory force provided the Agency worked out a suitable mechanism for enforcement. However, more resistance is expected from the Wood Preserving Industry.

(3) Regulation Under the Toxic Substances Control Act

Under this statute, the Agency would carry out its promise made in the amendment to the Notice of Intent to Cancel (51 FR 1334, January 10, 1986) to "issue a rule pursuant to the Toxic Substances Control Act (TSCA) directed to alert all purchasers and users of treated wood to appropriate information about the use of such products".

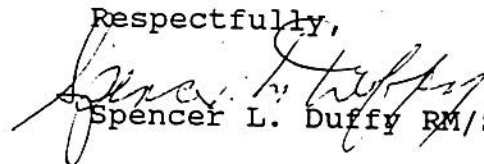
Rationale: This is the most costly and most time consuming option. However it is perhaps the most effective. TSCA has reviewed OPP's data base for the wood preservative chemicals and has concluded that additional environmental data will be needed to support rulemaking. Also, more human data may be needed in light

of the new advancements in science. (It is worthy to note that this option may be extremely difficult to implement unless the Agency finds a way to overcome the fact that 40 CFR 152.25 identifies treated wood as a pesticide and pesticides are exempt from regulation under TSCA). Following several meetings with OTS, OPP has not been successful in getting OTS to elevate the Wood Preservative Chemicals to a point on their priority chemical list where rulemaking would be justified. However, the new team member for OTS expressed optimism that OTS would revisit the Wood Preservative issue this year if this option is adopted.

The RM will draft the briefing paper for team review and will notify the team of the date for the briefing.

The meeting was adjourned at 2:35 pm.

Respectfully,


Spencer L. Duffy RM/SRB

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